

IN RE: )  
 )  
HAYSLETT/JUDY OIL, INC., ) Bankruptcy Case No. 03-91436  
 )  
Debtor. )

The Court has reviewed the case authority cited by the parties, and finds that the tax which is the subject of Claim No. 13 is governed by the Illinois Motor Fuel Tax, cited as 35 ILCS 505/1, *et seq.* Although there are no reported decisions regarding the question of how Illinois Motor Fuel Taxes are classified under 11 U.S.C. § 507(a)(8), the Court finds the cases of *In re Funk*, 1999 WL 33596475 (Bankr. S.D. Ill. 1999), and *In re Groetken*, 843 F.2d

1007 (7th Cir. 1988), to be instructive on the issue before the Court. In reviewing the criteria set out in Funk and Groetken, this Court finds that the Illinois Motor Fuel Tax is, in fact, an excise tax, rather than a trust fund tax. In the case of a trust fund tax, the tax is actually imposed upon another person, such as an employee or a retail customer, but is collected by the business or employer and held "in trust" temporarily until it is remitted to the taxing authority. The Illinois Motor Fuel Tax is clearly not such a tax. The Illinois Motor Fuel Tax is rather an excise tax in that it is imposed directly on the business that sells motor fuel in Illinois, rather than on the customers of that business. The formula for computing the fuel distributor's motor fuel tax liability is based upon the amount of fuel that passes through the distributor's tanks in a given calendar month. There is nothing, either in the statute or in the case law, to indicate that the Illinois Motor Fuel Tax is a tax upon the purchaser. Thus, the Court finds that, based upon the clear language of the statute and the manner in which collection of the Illinois Motor Fuel Tax is administered, said tax is an "excise tax" within the meaning of 11 U.S.C. § 507(a)(8)(E) and should be given priority commensurate with § 507(a)(8)(E), in combination with 11 U.S.C. § 523(a)(1)(A).

Based upon the conclusion that the Illinois Motor Fuel Tax is an excise tax, the Court finds that the portion of Claim No. 13, filed by the Illinois Department of Revenue, should be a priority in the amount of \$65,830.44. Further, the Court finds that, pursuant to 11 U.S.C. § 507(a)(8)(G), the \$39,576 penalty portion of the taxes, as listed in Claim No. 13, should be classified as non-priority.

ENTERED: December 8, 2003.

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GERALD D. FINES  
Chief United States Bankruptcy Judge

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE CENTRAL DISTRICT OF ILLINOIS

IN RE: )  
HAYSLETT/JUDY OIL, INC., ) Bankruptcy Case No. 03-91436  
Debtor. )

ORDER

For the reasons set forth in an Opinion entered on the 8th day of December 2003;

IT IS HEREBY ORDERED that:

A. The Objection to Confirmation of Plan filed by the Illinois Department of Revenue on October 1, 2003, is DENIED;

B. The Objection to Classification of Portions of Claim No. 13 of Illinois Department of Revenue filed by the Debtor on November 7, 2003, is ALLOWED; and,

C. The Debtors' Plan of Reorganization will be confirmed by separate order to be submitted by Debtors' counsel within 14 days of the date of this Order.

ENTERED: December 8, 2003.

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GERALD D. FINES  
Chief United States Bankruptcy Judge

COPY OF OPINION AND ORDER SENT TO:

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DATED: December 8, 2003.

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Deputy Clerk